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HAIPING SU,

No. C09-02838 JW (HRL)

Plaintiff,

V.

UNITED STATES OF AMERICA; NATIONAL AERONAUTICS AND SPACE ADMINISTRATION; CHRISTOPHER SCOLESE; CHARLES F. BOLDEN, JR.; SIMON PETER WORDEN; ROBERT DOLCI; REGINALD WADDELL; and DOES 1-100.

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO COMPEL DISCOVERY**

[Re: Docket No. 133]

Defendants.

Defendants move to compel further discovery from plaintiff Haiping Su. Su agrees to supplement his damages disclosures, but opposes the motion in all other respects. The matter is deemed appropriate for determination without oral argument, and the March 15, 2011 hearing is vacated. CIV. L.R. 7-1(b). Upon consideration of the moving and responding papers, this court grants the motion in part and denies it in part as follows:

A. Plaintiff's Claimed Damages

As noted above, plaintiff agrees to supplement his damages disclosures on or before March 15, 2011. He shall do so. Defendants' motion is otherwise denied as moot.¹

¹ Defendants say that, upon review of Su's supplemental disclosures, they may need more time for discovery and may want to serve additional expert reports. Alternatively, defendants argue that they may request an order precluding plaintiff from presenting evidence of his claimed damages. To the extent defendants believe that any such orders are warranted, they may need to find themselves seeking appropriate relief from Judge Ware.

1 B. Plaintiff's Tax Returns

2 Copies of tax returns in the hands of the taxpayer generally are subject to discovery. St.
3 Regis Paper Co. v. United States, 368 U.S. 208, 218-19 (1961). And, “[t]ax returns do not
4 enjoy an absolute privilege from discovery.” Premium Service Corp. v. The Sperry &
5 Hutchinson Co., 511 F.2d 225, 229 (9th Cir. 1975). “Nevertheless, a public policy against
6 unnecessary public disclosure arises from the need, if the tax laws are to function properly, to
7 encourage taxpayers to file complete and accurate returns.” Id. To balance the stated need for
8 discovery against the policy favoring confidentiality, many courts permit discovery of tax
9 returns only where the information is relevant and there is a compelling need for the returns
10 because the information is not otherwise readily available. See Aliotti v. The Vessel Sonora,
11 217 F.R.D. 496, 497 (N.D. Cal. 2003) (finding that although plaintiff’s tax returns were
12 relevant, defendant failed to establish a compelling need for them); see also Kayner v. City of
13 Seattle, No. C04-2567-MAT, 2005 WL 482072 *1 (W.D. Wa., Feb. 27, 2006) (noting that “the
14 greater weight of authority concludes that tax returns are subject to at least some level of
15 heightened protection from disclosure”).

16 Here, defendants seek production of Su’s tax returns from 2003 to the present. Su
17 initially agreed to produce the requested returns, but says that he could not do so after
18 defendants refused to agree that the documents would be kept confidential. Su’s tax returns are
19 relevant or reasonably calculated to lead to the discovery of admissible evidence. FED. R. CIV.
20 P. 26(b). Although plaintiff has produced his W-2 forms and payroll records, he has alluded to
21 other sources of income. Moreover, in view of plaintiff’s agreement that his damages
22 disclosures should be supplemented, and given the upcoming close of discovery, this court will
23 exercise its discretion and allow defendants leeway to obtain the requested returns.
24 Nevertheless, as noted above, tax returns should be protected from unnecessary public
25 disclosure. And, defendants have failed to convince that plaintiff’s tax returns should be
26 produced without a protective order. See Stokwitz v. United States, 831 F.3d 893, 897 (9th Cir.
27 1987) (“The confidentiality of tax information may also be preserved in civil proceedings
28 through protective orders.”).

1 Accordingly, defendants' motion as to this issue is granted in part and denied in part.
2 Plaintiff shall, within 14 days from the date of this order, produce the requested tax return
3 documents. The tax returns shall be kept confidential and may be used only for purposes of
4 prosecuting, defending, or attempting to settle this litigation. Additionally, the tax returns may
5 only be viewed by persons involved in this litigation.

6 C. Media Contacts

7 Interrogatory 17 asks plaintiff to “[s]tate the name, street address, electronic mail
8 address, internet address, and telephone number of all media outlets or news organizations of
9 any nature that you or anyone on your behalf had contacted, or that contacted you or anyone on
10 your behalf, and identify every communication that occurred with any such media outlet or
11 news organization regarding the facts alleged in your Consolidated Complaint.” (Mei Decl.,
12 Ex. 3). The requested information is relevant or reasonably calculated to lead to the discovery
13 of admissible evidence. FED. R. CIV. P. 26(b). Plaintiff has not clearly said that responsive
14 information does not exist. He has not convincingly demonstrated that the requested
15 information is private or protected by the attorney-client privilege. Nor is this court persuaded
16 that plaintiff may withhold responsive information that his attorneys may not have
17 communicated to him. Defendants' motion as to this interrogatory is granted. Within 14 days
18 from the date of this order, plaintiff shall answer this interrogatory, fully and under oath,
19 furnishing all information available to him, including any responsive information known to his
20 attorneys. FED. R. CIV. P. 33(b).

21 D. Plaintiff's Potential Witnesses

22 Plaintiff has identified 26 potential witnesses in his initial disclosures. This court is told
23 that all but one are employees of the University of California, Santa Cruz (UCSC). Defendants
24 move for an order requiring Su to provide more specific information about what these witnesses
25 know. Plaintiff says that he cannot provide more specific information until he has an
26 opportunity to interview them. Here, he points out that defense counsel apparently has
27 interviewed at least some of these witnesses, whereas he has not been given permission by
28 UCSC's general counsel to do the same. Plaintiff is obliged to provide information reasonably

1 available to him. However, Su says that he cannot provide information he says he does not
2 have; and, defendants have not persuaded that plaintiff is improperly withholding information.
3 Accordingly, their motion on this issue is denied. Plaintiff is nevertheless reminded that he has
4 a continuing duty to supplement his discovery responses and disclosures. FED. R. CIV. P. 26(e).

5 SO ORDERED.

6 Dated: March 9, 2011

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HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

1 5:09-cv-02838-JW Notice has been electronically mailed to:
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6 Richard Tyler Atkinson tatkinson@mcmansfaulkner.com
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8 Counsel are responsible for distributing copies of this document to co-counsel who have not
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